

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8300 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 - No

MOHMEDHUSEN SIDDIKBHAI

Versus

STATE OF GUJARAT

Appearance:

MR AR THACKER for Petitioner

MR DN PATEL, AGP for Respondents

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 21/01/99

ORAL JUDGEMENT

Rule. In the facts and circumstances of the case, the matter is taken up for final disposal today.

2. In this petition under Article 226 of the Constitution, the petitioner has challenged the orders dated 15.11.1995 (Annexure "B") and 30.1.1996 (Annexure "C") of the Collector, Rajkot as confirmed by the order dated 3.9.1997 (Annexure "D") of the Additional Chief Secretary (Appeals) in the Revenue Department of the State Government, rejecting the petitioner's application

for grant of lease of land for manufacturing salt.

3. The facts leading to filing of this petition, briefly stated, are as under :-

On 9.3.1993, petitioner-Mohmedhusen Siddikbhai applied to the Collector, Rajkot for granting lease of 240 Acres of land in Plot Nos. 8 and 9 in village Haripar, Taluka Maliya. That application came to be rejected by the Collector on 15.11.1995 on the ground that the petitioner's father was already granted lease of 347 Acres of land for salt manufacturing and, therefore, the petitioner being a family member of lessee of another land, cannot be granted such lease. The petitioner made a representation dated 11.12.1995 to the Collector requesting him to reconsider his decision. That representation also came to be rejected by the Collector's communication dated 30.6.1996 (Annexure "C"). The petitioner, therefore, preferred revision application before the State Government. The State Government rejected the revision application by its order dated 20.8.1997. It is against the aforesaid orders that the petitioner has filed the present petition.

4. At the hearing of this petition, Mr JR Nanavati and Mr AR Thacker, learned counsel for the petitioner have submitted that the State Government has recorded the findings that there is no other application for lease of the land in question, that the applicant was otherwise found to be eligible for grant of lease for the purpose of salt manufacturing; that no other public authority or agency required the land in question and the Mamlatdar as well as the Assistant Collector had recommended the grant of lease in favour of the petitioner, but still the Collector rejected the petitioner's application on the irrelevant ground that the petitioner's father was already granted lease of another parcel of land admeasuring 347 Acres. It is further submitted that the petitioner was born on 5.4.1971 and, therefore, on the date of application the petitioner was aged 22 years and was not only eligible for applying for lease, but the petitioner was also interested in carrying on his independent business of salt manufacturing without being compelled to join the business of his father.

It is, therefore, submitted that the orders of the Collector and the State Government are required to be set aside and the Collector should be directed to reconsider the petitioner's application.

5. On the other hand, Mr DN Patel, learned AGP

appearing for the respondents has submitted that the State Government has specifically recorded that the petitioner had not produced anything to show that the petitioner was staying separate from his father and was carrying any separate business. Mr Patel, therefore, submitted that the petition deserves to be dismissed.

6. Having heard the learned counsel for the parties, it appears that in view of the fact that no statutory provision or policy decision is pointed out on behalf of the respondents to show that if a person has already got lease of land for salt manufacturing, another member of the family cannot be granted lease of another land. The petitioner had already attained majority and was aged 22 years at the time of applying for the lease. In fact, the petitioner had applied for the lease of land on 9.3.1993 whereas the petitioner's father applied for lease in 1994 (as stated by Mr Nanavati for the petitioner who has further stated that the order of the Additional Chief Secretary does not mention the correct date on which the petitioner had applied for such lease and that the father had applied for lease on 29.4.1994) and, therefore, the petitioner was not disqualified under any statutory provision or any policy decision to apply for the grant of such lease. In fact, the order of the Additional Chief Secretary makes it clear that no other person had applied for lease of the land in question and there was no question of considering any competing claims. In this set of circumstances, when there was no other claimant for the land in question, the Collector was not justified in rejecting the petitioner's application only on the ground that the petitioner's father was already granted lease of another land admeasuring 347 Acres. It is also pertinent to note that when the petitioner had already applied for grant of lease of 240 Acres of land for salt manufacturing in 1993 and when the petitioner's father applied for lease of another land for salt manufacturing in 1994, it is obvious that the petitioner may not have his own independent business at the time when the petitioner's application was being decided by the Collector and the Additional Chief Secretary. Hence, the fact that the petitioner did not have any individual business of his own cannot militate against the petitioner's application being considered. The petition, therefore, deserves to be allowed on this ground alone and the Collector is required to be directed to reconsider the petitioner's application without taking into consideration the fact that the petitioner's father was already granted lease of another land for salt manufacturing.

7. In the result, the petition is allowed. The impugned orders dated 15.11.1995 (Annexure "B"), 30.1.1996 (Annexure "C") passed by the Collector, Rajkot, and 3.9.1997 (Annexure "D") passed by the Additional Chief Secretary (Appeal) in the Revenue Department are set aside and the Collector, Rajkot is directed to reconsider the petitioner's application dated 9.3.1993 without taking into consideration the fact that the petitioner's father has already been granted lease of another parcel of the land for salt manufacturing. The Collector, Rajkot shall take decision afresh within two months from the date of receipt of a certified copy of this order.

8. Rule is made absolute to the aforesaid extent with no order as to costs.

Sd/-

January 21, 1999 (M.S. Shah, J.)

sundar/-